HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PAUL GANCARZ, an individual; DANIEL TURETCHI, an individual; COLTON BROWN, an individual; JAMES JOHNSON and AMELIA JOHNSON, individually and husband and wife, Plaintiffs, v. DAVID ALAN CAPITO II, aka VYACHESLAV ARKANGELSKIY, aka RYAN SMITH, an individual, Defendant.	CASE NO. 3:23-cv-01113-RAJ DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM NOTE ON MOTION CALENDAR: July 25, 2025 ORAL ARGUMENT REQUESTED

COMES NOW Defendant to submit this motion to dismiss Plaintiffs' complaint for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

I. INTRODUCTION

This case involves a dispute between alleged individual members of a white supremacist organization called Patriot Front, over the alleged infiltration by the Defendant into that group and leaking of member information to a publication. *See* Dkt 1, Complaint at 2-3; Center for Extremism, *Patriot Front*, ADL (July 1, 2024)

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https://www.adl.org/resources/backgrounder/patriot-front.[1] The complaint asserts six insufficiently pled claims against Mr. Capito. Three of the claims have to do with computer trespass laws; two are based in the common law tort of invasion of privacy; and the final claim is for fraudulent misrepresentation.

The computer trespass counts fail to allege an essential, threshold element that allows for a civil cause of action: cognizable loss or damages.

The invasion of privacy claims fail for two reasons: the information alleged to have been exposed is a matter of substantial public interest, and the alleged invasion should not be highly offensive to any reasonable person in the plaintiff's shoes.

The fraudulent misrepresentation count fails to meet the bar of specificity required by the Federal Rules of Civil Procedure.

If this Court dismisses the federal claim, for which it has arguable original jurisdiction, the Court should deny supplemental jurisdiction over the state law claims.

II. LEGAL STANDARD

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant's has acted unlawfully . . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it stops short of the line between plausibility of 'entitlement to relief.'" *Id.* (citing *Bell Atl. Corp. v. Twombly*, 544 U.S. 556-7 (2007)). Absent

[1] All websites cited in this brief were last visited June 27, 2025.

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facial plausibility, a plaintiff's claims must be dismissed. *Id.*

Dismissal is appropriate where the complaint "fails to state a cognizable legal theory . . . to support a claim." *Shroyer v. New Cingular Wireless Servs., Inc.,* 622 F.3d 1035, 1041 (9th Cir. 2010). "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id*. at 679 (citations omitted). *See also Iqbal*, 556 U.S. at 679. The court should not accept as true allegations that state only legal conclusions. *Id*. at 678-79 (court is not required to accept as true a "legal conclusion couched as a factual allegation").

Although Mr. Capito intends to vigorously dispute Plaintiff's inaccurate and outlandish factual assertions if the complaint is not dismissed, for purposes of this motion Mr. Capito will not undertake to refute the allegations against him. Even if the well-pleaded allegations are assumed, *arguendo*, to be true, they nevertheless fail to support any of the causes of action asserted in the complaint. Therefore, the complaint should be dismissed.

III. ARGUMENTS

A. Plaintiffs' CFAA Claims are Facially Deficient as They Fail to Allege a Cognizable "Loss" Under the Statute

The CFAA creates criminal and civil liability for "acts of computer trespass by those who are not authorized users or who exceed authorized use." *Facebook, Inc. v. Power Ventures, Inc.*, 844 F.3d 1058, 1065 (9th Cir. 2016). The CFAA authorizes a person damaged by prohibited conduct to bring a civil suit only where the conduct involves one of an enumerated set of factors. 18 U.S.C. § 1030(g) (citing 18 U.S.C. § 1030(c)(4)(A)(i)).

To survive dismissal, a CFAA claim must plausibly allege: (1) unauthorized access (or exceeding authorized access), and (2) resulting "loss" or "damage" as defined by § 1030(e).

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Further, the "loss" must be to "1 or more persons during any 1-year period . . . aggregating at least $5,000 in value." 18 U.S.C. § 1030(c)(4)(A)(i)(I). "Authorization" is not defined in the statute, but the plain meaning, as defined by *Merriam-Webster* online, is "the act of authorizing," which is "to endorse, empower, justify, or permit by or as if by some recognized or proper authority (such as custom, evidence, personal right, or regulating power)." https://www.merriam-webster.com/dictionary/authorization; https://www.merriam-webster.com/dictionary/authorizating.

Critically, the damages/loss claimed by the plaintiff are not cognizable under the statute. In the Complaint, Plaintiffs allege that Defendant's actions lead to damages in the form of mental distress and loss of income/job opportunities. This does not fall within the statutory definition of the term "loss" under the CFAA: "any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service." 18 U.S.C. § 1030(e)(11). The Ninth Circuit has held that this is a "narrow conception of loss" for CFAA violations. *Andrews v. Sirius XM Radio Inc.*, 932 F.3d 1253, 1262-63 (9th Cir. 2019). The *Andrews* court noted that the CFAA's definition of damages, "with its references to damage assessments, data restoration, and interruption of service -- clearly limits its focus to harms caused by computer intrusions, not general injuries unrelated to the hacking itself." The court further held that "any theory of loss must conform to the limited parameters of the CFAA's definition." *Id.* at 1263.

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In *Creative Computing v. Getloaded.com LLC*, the Ninth Circuit held that the CFAA limits damages to economic damages, precluding "damages for death, personal injury, mental distress, and the like." 386 F.3d 930, 935 (9th Cir. 2004).

Accordingly, in *U.S. v. Middleton*, the Ninth Circuit found that the district court's jury instructions on "damage" and "loss" under the CFAA were fair and accurate. 231 F.3d 1207, 1213 (9th Cir. 2000). Those instructions "explained to the jury that 'damage' is an impairment to [the plaintiff's] computer system that caused a loss of at least $5,000," and "In determining the amount of losses, you may consider what measures were reasonably necessary to restore the data, program, system, or information that you find was damaged or what measures were reasonably necessary to resecure the data, program, system, or information from further damage." *Id*. That measure of damages bears no resemblance to the allegations in the instant complaint. Similarly, in *United States v. Sablan*, 92 F.3d 865, 869 (9th Cir. 1996), the court upheld a decision wherein, "[i[n calculating the loss, the district court included the cost of repairs and other activities necessary to restore the bank's files to their original condition."

In short, at least within the Ninth Circuit, "loss" under the CFAA extends only to costs incurred assessing the damage to a computer's data breach, restoration and re-securitization of the data, and other measures focused on the integrity of the computer itself. What the alleged wrongdoer does with the data after a breach is not considered when calculating loss under the CFAA. Nor do litigation expenses constitute "losses" that are cognizable under the statute. *See, e.g., Wichansky v. Zowine*, 150 F. Supp. 3d 1055, 1071-72 (D. Ariz. 2015).

This court previously considered a damages claim similar to the one at issue here, in *United Federation of Churches, LLC v. Johnson*, 598 F. Supp. 3d 1084 (W.D. Wash. 2022). In that case the Satanic Temple (TST) sued a former member, Mr. Johnson, for violation of the

CFAA when he used his administrative privileges to hijack the TST social media accounts by deleting access to the other administrators. *Id.* In *Johnson,* this court granted defendant's motion to dismiss the CFAA claims, agreeing with the defendant's argument that the alleged loss of members represents a "lost business opportunity" and/or "damaged reputation" that is not actionable under the CFAA. *Id.* at 1097-98.

In the case at issue, the losses alleged in the complaint are not in any way related to Patriot Front's database, program, revenue, incurred costs, or even anything related to the organization itself. The losses and damages Plaintiffs alleged are solely related to the Plaintiffs' *individual* reputations, employment, and alleged emotional harms, and not by an interruption of computer service or any damages to Patriot Front's database or computers. *See* Complaint ¶¶ 31-36 and ¶ 41.

Plaintiffs' cause of action under the CFAA is facially deficient and must be dismissed for failure to state a claim for relief.

B. Plaintiffs' Claim Under Virgina's Computer Trespass Fails, as It Fails to Show an Injury Cognizable Under the Statute

Similarly to Plaintiffs' CFAA claims, Plaintiffs' attempt to invoke Virginia's computer trespass statute (Va. Code Ann. § 18.2-152.4) fails as a matter of law, because the statute does not cover the conduct alleged. The Complaint asserts that defendant accessed Patriot Front's databases and obtained certain information on its members' identity. However, the statute narrowly prohibits only specific acts: (1) disabling, deleting, or removing data; (2) causing malfunctions; (3) altering or erasing data; (4) altering financial instruments or funds transfers; (5) causing physical property damage via computer; (6) making unauthorized copies of data or

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software; (8) installing keyloggers or spyware; or (9) installing software that seizes control or disrupts system functions. *Va.* Code Ann. § 18.2-152(A)(1)-(9).

The statute clearly does not prohibit mere access to, or copying or sharing of, information, absent alteration, destruction, or impairment of data or systems. *Tryco, Inc. v. United States Med. Source*, 80 Va. Cir. 619, 629 (Cir. Ct. 2010). In *Tryco*, the court rejected a Virginia statutory computer trespass claim where the plaintiff failed to show any resulting statutory injury from the copying of files. *Id*. Specifically, no facts were pled stating that the files were deleted from the accessed database or to support any other type of covered loss or injuries;. *Id.*

In contrast, in *Hately v. Watts*, the Fourth Circuit cited calls to technical support, time spent assessing unauthorized access to plaintiff's account, the downloading of anti-virus software, and restoration of old e-mails as grounds for finding that the plaintiff had successfully alleged a cognizable injury. 917 F.3d 770, 775 (4th Cir. 2019). The Fourth Circuit has similarly held that payment of specialists to fix a data breach is a legitimate injury for which civil damages can be awarded. *A.V. ex rel. Vanderhyne v. iParadigms, LLC*, 562 F.3d 630, 647 (4th Cir. 2009).

Just as with the CFAA, the concept of "injury" under the Virginia Computer Trespass Act goes no further than damage to the computer or data itself; what happens with harvested data after a breach is not considered.

Here, Plaintiffs allege only that Capito obtained and later disclosed information. They do not allege that Capito deleted, altered, disabled, or impaired any data or computer systems. *See* Complaint ¶¶ 53-57. Plaintiffs' alternative theory, that liability attaches merely because

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computer operations were involved, finds no support in the statutory text or controlling Virginia law. *Id.; see* Va. Code Ann. § 18.2-152.4(A).

As such, Plaintiffs' claim under Va. Code Ann. § 18.2-152.4 fails to state a claim for relief and must be dismissed.

C. Plaintiffs' Claim under Maryland's Computer Offenses Statute Fails, as It Does Not Allege a Specific and Direct Injury

Plaintiffs also allege that Defendant violated Maryland's computer offenses statute by accessing Patriot Front's database. *See* Complaint ¶¶ 58-62, citing Md. Code Ann., Crim. Law § 7-302(g)(1). However, as with the CFAA and Virginia claims, Plaintiffs' civil claim under the Maryland statute fails, because Plaintiffs do not allege a "specific and direct injury" resulting from the alleged access, as required for civil liability.

Under § 7-302(g)(1), a civil plaintiff must plead a specific and direct injury that flows from the statutory violation. Of the three statutes in the complaint, the Maryland Unauthorized Access to Computers Act is the clearest in explaining what kinds of losses it addresses in the statutory text itself. Maryland Code § 7-302. In its definitions, the statute provides:

> (3)(i) "Aggregate amount" means a direct loss of property or services incurred by a victim.
>
> (ii) "Aggregate amount" includes:
>
> 1. the value of any money, property, or service lost, stolen, or rendered unrecoverable by the crime; or
>
> 2. any actual reasonable expenditure incurred by the victim to verify whether a computer program, computer, computer system, or computer network was altered, acquired, damaged, deleted, disrupted, or destroyed by access in violation of this section.

Id.

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Here, Plaintiffs allege that their harm consists of lost employment opportunities, reputational harm, and emotional distress. *See* Complaint ¶¶ 33 and 62. However, these injuries are not direct results of any alleged database access and by no stretch of interpretation fall under the Maryland statutory definition cited above. Rather, plaintiffs' employers made independent decisions to terminate Plaintiffs. Patriot Front is a self-identified white nationalist and fascist organization whose activities and membership are public by plaintiffs' own participation. These were discretionary employment decisions made by third parties, not the natural or automatic consequence of any alleged computer access.

As such, plaintiffs fail to satisfy the direct injury element necessary to state a civil claim under the Maryland statute. This same causal deficiency undermines much of Plaintiffs' complaint generally: their losses are not directly attributable to Defendant's alleged access, but to their own voluntary membership in Patriot Front and the resulting public and employer reactions that followed. Consequently, Plaintiffs' claim under the Maryland statute fails to state a claim for relief and must be dismissed.

D. Plaintiffs Fail to State a Claim for the Torts of "Intrusion upon Private Affairs" and "Giving Publicity to Private Facts," Because the Membership of Patriot Front is Information of Legitimate Public Interest, and Publication of that Information Should Be Within Any Patriot Front Member's Reasonable Expectation

To prevail on the common law tort of Intrusion on Private Affairs (also known as Intrusion upon Seclusion), a plaintiff must prove that the defendant "(1) deliberately intruded; (2) into the plaintiff's solitude, seclusion, or private affairs; (3) in a manner that would be highly offensive to a reasonable person." *Fisher v. State ex rel. Dep't of Health*, 125 Wash. App. 869, 879 (2005). *See also Restatement (Second) of Torts* § 652B (1977) (same).

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The common law tort of Giving Publicity to Private Facts is similar. It includes three elements: "a plaintiff must prove that the defendant (1) intentionally disclosed private facts; (2) that were not of legitimate concern to the public; (3) which disclosure would be highly offensive to a reasonable person." *Adams v. King Cnty.*, 164 Wash. 2d 640, 661, (2008). *See also Restatement (Second) of Torts* § 652D (1977).

The right to privacy is not absolute and must be balanced against the legitimate public interest in the information at issue. *Aronson v. Dog Eat Dog Films, Inc.*, 738 F. Supp. 2d 1104, 1110 (W.D. Wash. 2010). The Ninth Circuit has recognized that the public's interest in certain information "may mitigate the offensiveness of the intrusion" in an "intrusion on private affairs" case. *Med. Lab'y Mgmt. Consultants v. Am. Broad. Companies, Inc.*, 306 F.3d 806, 819 (9th Cir. 2002). For example, in *Carafano v. Metrosplash.com, Inc.*, the Ninth Circuit affirmed on other grounds a district court's rejection of an invasion of privacy claim, because the personal address in question was "newsworthy." 339 F.3d 1119, 1122 (9th Cir. 2003).

Patriot Front was formed by participants in the deadly white supremacist 2017 "Unite the Right" rally in Charlottesville, Virginia, in which a member of Patriot Front's predecessor organization drove his car into an anti-racist march, killing one and injuring over a dozen. *See* ADL.org, *Hate on Display/Patriot Front,* https://www.adl.org/resources/hate-symbol/patriot-front.[2] Patriot Front's bigoted demonstrations have gathered media attention from the New York

[2] FRE 201 allows judicial notice of any fact "not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). *See Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (court may take judicial notice of undisputed matters of public record); *Ariz. Libertarian Party v. Reagan*, 798 F.3d 723, 727 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 823 (2016) (same). *See, e.g., Lolli v. County of Orange*, 351 F.3d 410 (9th Cir. 2003) (taking judicial notice of facts about diabetes); *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 999 n.6 (9th

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Times, NPR, and other major news outlets. *See* Alan Feuer, *After Jan. 6 Sedition Convictions, Far-Right Threats Remain,* NY Times (May 7, 2023), https://www.nytimes.com/2023/05/05/us/politics/jan-6-sedition-proud-boys-far-right.html; *see also* All Things Considered, *A Look at the Role Armed Militia Groups May Have Played in the Weeks Before Jan. 6*, NPR (June 12, 2022, at 17:10 EST), https://www.npr.org/2022/06/12/1104460671/a-look-at-the-role-armed-militia-groups-may-have-played-in-the-weeks-before-jan-.

The names and vocations of Patriot Front participants have been at the center of much of this coverage. *See* Mackenzie Ryan, *A White Nationalist Pyramid Scheme: How Patriot Front Recruits Young Members,* The Guardian (Sep. 2, 2022, at 06:00 EDT), https://www.theguardian.com/us-news/2022/sep/02/patriot-front-recruits-members-young-pyramid-scheme; Rina Torchinsky, *1 in 5 Patriot Front Applicants Say They Have Ties to the Military*, NPR (Feb. 9, 2022, at 18:46 EST), https://www.npr.org/2022/02/09/1079700404/1-in-5-patriot-front-applicants-say-they-have-ties-to-the-military.

The membership of Patriot Front is newsworthy information of legitimate public interest, as evidenced by the frequent coverage of their membership and operations by major news outlets. For this reason, the claims of "invasion of privacy" by either "intrusion on private affairs" or "giving publicity to private facts" fail to state a claim and should be dismissed.

Cir. 2014) (taking judicial notice of the recession in the U.S. economy from December 2007 to June 2009); *W. Coast Hotel Co. v. Parrish*, 300 U.S. 379, 399, 57 S. Ct. 578 (1937) ("We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved"); *United States v. Orozco-Acosta*, 607 F.3d 1156, 1164 n.5 (9th Cir. 2010) (taking judicial notice of the fact that nearly 281,000 aliens were removed from the United States pursuant to final orders of removal in 2006).

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In addition, not all statements which disclose private facts about a plaintiff are actionable. Both "intrusion on public affairs" and "giving publicity to private facts" require that the disclosure was "highly offensive to a reasonable person." *Restatement (Second) of Torts* § 652B (1977). In determining the offensiveness of an invasion of privacy, the Ninth Circuit considers "the degree of the intrusion, the context, conduct and circumstances surrounding the intrusion as well as the intruder's motives and objectives, the setting into which he intrudes, and the expectations of those whose privacy is invaded." *Deteresa v. Am. Broad. Cos.*, 121 F.3d 460, 465 (9th Cir. 1997).

The expectations of Patriot Front members regarding the public interest in their membership does not tend toward one of privacy. Since at least 2017, publication of membership in white supremacist extremist organizations has been so commonplace that there have been news articles, public debate, and even academic research into the subject. *See* Decca Muldowney, *Info Wars: Inside the Left's Online Efforts to Out White Supremacists,* Pro Publica, (Oct. 30, 2017, at 08:00 EDT), https://www.propublica.org/article/inside-the-lefts-online-efforts-to-out-white-supremacists; WNYC Studios, *Is it Right to Dox a Nazi* (Dec. 21, 2017), https://www.wnycstudios.org/podcasts/otm/segments/it-right-dox-nazi; Farah Mohammed, *Is Doxxing the Right Way to Fight the "Alt-Right?"*, JSTOR (Aug. 30, 2017), https://daily.jstor.org/is-doxxing-the-right-way-to-fight-the-alt-right/.

For years, Patriot Front has been aware of these efforts to disclose their members' identities. *See* Chris Schiano, *et. al.*, *Patriot Front Fascist Leak Exposes Nationwide Racist Campaigns,* Unicorn Riot (Jan. 21, 2022), https://unicornriot.ninja/2022/patriot-front-fascist-leak-exposes-nationwide-racist-campaigns/.

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Patriot Front as a group has been on the offensive side of "doxing" as well, for example, when in June 2022 far-right hackers attempted to expose information about the police officers who arrested 31 Patriot Front members harassing a gay pride march in Idaho. *See* Mack Lamoureux, *Neo-Nazis Are Trying to Dox the Cops Who Arrested Patriot Front Members*, Vice News, (June 13, 2022, at 15:52 EST), https://www.vice.com/en/article/4axgzj/neo-nazis-are-trying-to-dox-the-cops-who-arrested-patriot-front-members.

Due to its familiarity with doxing, both as a target and as a catalyst thereof, any member in Patriot Front should have a reasonable expectation that the organization's membership is under scrutiny. Given that such disclosure is also a matter of public interest, Plaintiffs' complaint fails to state a claim under either common-law theory, and should be dismissed.

E. The Fraudulent Misrepresentation Allegations Do Not Rise to the Level of Particularity Required by Federal Rules of Civil Procedure 9(b)

For claims of fraud, FRCP Rule 9(b) sets a heightened pleading requirement, such that a claim for fraudulent misrepresentation must state the content of the allegedly false statements and "the time, place, and specific content of the false representations as well as the identities of the parties to the misrepresentation." *Schreiber Distrib. Co. v. Serv-Well Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986). "To satisfy Rule 9(b), a pleading must identify the who, what, when, where, and how of the misconduct charged, as well as what is false or misleading about [the purportedly fraudulent] statement, and why it is false." *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 (9th Cir. 2011) (internal quotation marks omitted).

The complaint specifies no "who" regarding the allegedly false statements made in Paragraph 20, beyond the allegation that the statements were made to the general organization "Patriot Front."

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Neither does the pleading specify the "when" of the allegedly false statements made to Colton Brown under Count VI. Complaint at ¶ 64. The complaint also does not indicate whether the statements in Paragraphs 20 and 64 are the same, or whether plaintiffs allege defendant Capito lied to people other than Brown in July of 2021. *See* Complaint ¶¶ 20 and 64. Even if the court is inclined to infer that the statements in Paragraphs 20 and 64 are the same, the pleading does not get any more specific in terms of the "when" than the month in which they allegedly happened.

The "what" of the fraud is also left vague, stating that Capito lied "about his background and values," but neither specifying the substance of the alleged lies or any facts that could make their falsity plausible. Complaint ¶ 20.

The statements alleged to have been made to Colton Brown include no specific "when" or context explaining whether they were made online, over the phone, in person, or any details of "how" the allegedly false information was conveyed. *See generally* Complaint.

Accordingly, the fraud claim lacks the particularity required for a pleading of fraud under Federal Rules of Civil Procedure Rule 9(b), and should be dismissed for failure to state a claim.

F. The Court Should Deny Supplemental Jurisdiction over the State Law Claims if It Dismisses Plaintiffs' Federal Claim

Federal courts have limited jurisdiction, but may, in specific instances, maintain supplemental jurisdiction over claims and counterclaims which have no other basis for jurisdiction in federal court. 28 U.S.C. § 1367. A court has jurisdiction over state law claims "that are so related to claims" brought under the Court's federal question jurisdiction "that they form part of the same case or controversy under Article III." *Id.* The assessment of whether such

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a claim forms part of the same "case or controversy," requires the Court to determine whether the federal claim and the state law claim arise from the same "common nucleus of operative fact." *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1195 (9th Cir. 2005) (citing *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S. Ct. 1130, 16 L. Ed. 2d 218 (1966)); *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004).

In the matter at hand, plaintiffs' allegations appear to arise from the same facts presented in the state and federal claims. However, if the federal CFAA claim is dismissed, that triggers a discretionary exemption from supplementary jurisdiction. Under 28 U.S.C. 1367(c)(3), the district court may decline to exercise supplemental jurisdiction over a claim if the court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. 1367(c)(3); *see Lacey v. Maricopa County,* 693 F.3d 896, 940 (9th Cir. 2012). If supplemental jurisdiction is not exercised by the district court, then all of the state law claims must be dismissed without prejudice. *See Wade v. Reg'l Credit Ass'n*, 87 F.3d 1098, 1101 (9th Cir. 1996); *Sikhs for Just. "SFJ", Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1096-97 (N.D. Cal. 2015), *aff'd sub nom. Sikhs for Just., Inc. v. Facebook, Inc.*, 697 F. App'x 526 (9th Cir. 2017).

If this Court finds that Plaintiffs' CFAA claim fails, both statute and caselaw support the dismissal of the state law claims.

CONCLUSION

Defendant Capito respectfully urges the Court to dismiss Plaintiffs' complaint in its entirety for failure to state a claim upon which relief can be granted.

Respectfully submitted June 27, 2025,

/s/ Lauren Regan
Lauren Regan, Lead Counsel, *pro hac vice* pending
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